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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,213	12/11/2003	George S. Pabis	12093/929	7999
26646 7590 10/30/2008 KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004				
EXAMINER PALABRICA, RICARDO J				
ART UNIT 3663		PAPER NUMBER		
MAIL DATE 10/30/2008		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/733,213

Applicant(s)

PABIS ET AL.

Examiner

Rick Palabrica

Art Unit

3663

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 October 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

October 24, 2008

/Rick Palabrica/
Primary Examiner, Art Unit 3663

Continuation of 11, does NOT place the application in condition for allowance because:

Applicant traversed the rejection of claims on the ground that applied art, i.e., the combination of Delevallee and Patterson, does not read on the claims. The examiner disagrees because applicant is mischaracterizing the applied art in his argument. Also, applicant appears to be improperly reading limitations from the specification into the claims in his arguments.

Applicant states that Delevallee teaches a method "for installing a sleeve within an instrument tube of a nuclear fuel assembly." Applicant appears to argue that Delevallee does not disclose or suggest a method for repairing a nuclear fuel assembly. The examiner disagrees. The claimed method essentially recites steps of installing a repair structure in a nuclear fuel assembly, and the applied art does the same, as further clarified below.

The preamble of the the claims (e.g., claim 9) recites a method "for repairing a nuclear fuel assembly." The preamble does not state what exactly is the component of the fuel assembly that is being repaired. Absent such definition, the examiner interprets the repair clause in preamble broadly, and reads applicant's claim language on applied art, Delevallee et al. as follows: a) "repair sleeve having a shaft with a first end, a second end, and a diameter " reads on cap 40; b) "guide thimble" reads on lining sleeve 32 having a collar 36. (Note: The examiner is NOT reading "repair sleeve" on element 22, contrary to applicant's allegation - see page 5 of the 10/20/08 Remarks. Thus, applicant is mischaracterizing the element that the examiner cites as reading on "guide thimble"). Also, applicant has neither defined nor specified the dimensions of the terms, "repair sleeve" and "guide thimble". Absent such definitions, the examiner interprets the terms broadly and read them on the above respective elements of the Delevallee. Both cap 40 and sleeve 32 are elements that Delevallee uses to repair/improve the structure of a nuclear fuel assembly.

Based on the above, the structure and method of operation/use/installation of the applied art, Delevallee is the same as that recited in the claims. Thus, the reference must inherently function in the same manner to produce the same results as applicant's situation. As to limitations which are considered to be inherent in a reference, note the case law of In re Ludtke, 169 USPQ 563, In re Swinehart, 169 USPQ 226, In re Fitzgerald, 205 USPQ 594, In re Best et al., 195 USPQ 430, and In re Brown, 173 USPQ 685, 688.

Note also that in Delevallee, as in the claims: a) guide thimble (i.e., sleeve 32) is connected to the top nozzle 12 through collar 36 (see Fig. 2 and col. 4, lines 7+); b) the diameter of the shaft of the repair sleeve (i.e., cap 40) is dimensioned such that an exterior of the shaft fits into the guide thimble (i.e., lining sleeve 32) in the guide thimble opening; c) the repair sleeve (i.e., cap 40) has a lapped edge 42 for installation on the top of the top nozzle 12 of the nuclear fuel assembly; d) there is at least one projection of the shaft of cap 40 that inserts into a dimple of the guide thimble (see Fig. 4). Again, applicant's allegation that "[t]here are no projections on the cap 40 that project into dimples in the sleeve of thimble 22, as there is no contact between cap 40 and the thimble 22" is incorrect because it is based on an erroneous association of thimble 22 being the guide thimble, which it is not.

Applicant traversed secondary art, Patterson, on the ground that the reference "does not disclose a or suggest a repair sleeve ..." (see page 7 of the 10/20/08 Remarks). The examiner disagrees. As stated in section 4 of the 11/15/07 Office action, Patterson was applied for its teaching on providing longitudinal slots for cap 40 of Delevallee to gain the advantages thereof (i.e., provide resiliency and ease of insertion into the guide thimble). Patterson was not applied for its teaching on a repair sleeve because such teaching is not needed since primary art, Delevallee, already teaches a repair sleeve. Thus applicant's argument against Patterson has no basis because applicant has not shown that the references do not teach what the examiner has stated they teach, nor, has the applicant shown that the examiner's reasoning for and manner of combining the teachings of references is improper or invalid.